IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 242 of 2003.

Judgement reserved on : 5.3.2007.

Date of decision: 7.3.2007.

Gian Chand ….. Appellant.

Vs.

State of H.P. …. Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting?[1]

For the Appellant : M/s Anup Chitkara & Bhupinder Ahuja, Advocates.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General with Mr. D.S.Nainta, Dy. Advocate General.

Surjit Singh, Judge.

Appellant is aggrieved by the judgement of the Sessions Judge, whereby he has been convicted of an offence, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, for allegedly possessing 10 Kilograms of Charas at a place called Koti Bridge, within the jurisdiction of Police Station, Sadar Chamba, on 19.12.2001 and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1,00,000/-, and in default of payment of

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

fine, to undergo simple imprisonment for a further period of three years.

2. Prosecution version is that on 19.12.2001, a police party headed by ASP Gyaneshwar Singh and comprising as its other members Inspector Kulwant Singh, HC Ajit Singh, HC Surinder Kumar, LHC Kartar Singh and constable Manohar Lal went towards Koti Bridge and when they reached near a temple, the appellant was found sitting by the road side and on seeing the police, he tried to flee along a foot path. He was chased and overpowered. He was carrying a bag on his shoulder, which was searched and on search Charas in the form of balls and sticks packed in a plastic bag was found. On being weighed, Charas was found to be ten kilograms. Two samples, each weighing 20 grams, were separated. The samples and the bulk Charas were made up into separate parcels and the same were sealed with a seal, which produced the impression of letter `R' of English Alphabet. Search and seizure memo was prepared. A report was sent to the Police Station for formal registration of the case. Appellant was arrested. Grounds of arrest were intimated to him, in writing. One of the two samples was sent to the Chemical Laboratory for analysis. The Chemical Examiner reported that the contents were of Charas.

3. The defence plea is that the appellant was forcibly taken away from his residence, which is at a distance of 50 Kilometers from the spot at mid night, despite resistance by inmates of the house and other residents of the village and in that process even the cap of one of the police officials fell on the spot, which the defence produced in

the trial court during the course of the trial as Ex. P-1. It is alleged that no Charas was recovered from the appellant and that a false case has been foisted on him.

4. We have heard the learned counsel for the appellant, as also the learned Additional Advocate General. Though we are not inclined to believe the defence version because the evidence on record does not establish the same, we have no doubt in our mind that the report of the Chemical Examiner Ex. PW 5/A, upon which prosecution relies does not stand connected with the stuff allegedly recovered from the appellant. According to the prosecution, one of the two samples taken out from the recovered stuff was sent to the Chemical Examiner through constable Raj Kumar No. 177, whom the prosecution examined as PW 5. This witness stated that he carried the sample against RC No. 4 of 2002 to the Composite Testing Laboratory, Kandaghat on 8.1.2002 and obtained receipt from the concerned official on the back of the RC and deposited that RC with the Muharrar Head Constable Narinder Kumar. Prosecution did not examine Head Constable Narinder Kumar. The report Ex. PW 5/A, however, shows that the sample was sent vide RC No. 113 of 2001, dated 27.12.2001 through constable Raj Kumar. With a view to satisfying ourselves about the exact number and date of the RC against which and the name of the constable through whom the sample was sent to the Composite Testing Laboratory, we sent for the RC Book containing RC No. 4 of 2002 and RC No. 113 of 2001. The RCs together with the receipts obtained from the concerned official of the Laboratory are pasted in this book. Against RC No. 113

of 2001 (dated 27.12.2001), samples/ case property of five cases were sent to the Chemical Examiner through constable Vinod Kumar, No. 429 and the concerned official acknowledged the receipt of case property in four of those five cases including the case in hand, i.e. case FIR No. 302 of 2001. Now report Ex. PW 5/A records that the case property was received through constable Raj Kumar, No. 177 on 8.1.2002. This is false on the face of it, because as per the N.C.B. form appearing on the upper portion of the report which was filled-in by the police officials, case property was sent through RC No. 113 on 27.12.2001, and according to RC No. 113 dated 27.12.2001 which is available in the RC Book received from the concerned Police Station, the case property was carried by constable Vinod Kumar No. 429 and delivered at the Laboratory on 28.12.2001. RC No. 4 of 2002, is also pasted in the book. As per contents of this RC, one sample of the case property, i.e. FIR No. 302 of 2001 was sent to the Chemical Examiner on 6.1.2002 and it was received at the Laboratory on 8.1.2002, per acknowledgement recorded by an official of the Laboratory.

5. Availability of two RCs in the relevant RC Book shows that two samples of case FIR No. 302 of 2001, i.e. the case in hand were sent to the Chemical Examiner. Admittedly, only two samples were taken out from the recovered stuff, but the prosecution produced one sample in the court, as per its evidence. This court had also sent for the case property and what has been produced in the court is one sealed parcel containing bulk Charas and another containing one of the two samples. It has not been explained when both the samples

had been dispatched to the Chemical Laboratory, one against RC No. 113 through constable Vinod Kumar and another against RC No. 4 of 2002 through constable Raj Kumar, how one more sample is still available with the prosecution and the same is claimed to be one of the two samples which were taken on the spot immediately after the seizure of the stuff. It has also not been explained as to what happened to the sample that was sent to the Laboratory against RC No. 113 of 2001 through constable Vinod Kumar. The possibility that the Chemical Examiner reported that the sample sent against RC No. 113 through constable Vinod Kumar did not contain Charas cannot be ruled out, especially when prosecution has not explained as to what happened to that sample and why second sample was sent through constable Raj Kumar on 6.1.2002 against RC No. 4 of 2002. The possibility that the second sample, which was sent through constable Raj Kumar against RC No. 4 of 2002, being not a sample of the stuff allegedly recovered from the appellant can also not be ruled out, particularly when as noticed hereinabove, there were only two samples and one sample had already been sent to the Composite Testing Laboratory against RC No. 113, report regarding which is not there and another sample is still with the prosecution and was produced in the court during the trial and also in this Court.

6. In view of the above stated position, it is held that the stuff allegedly recovered from the appellant has not been proved to be Charas, as the report of the Chemical Examiner Ex. PW 5/A does not stand linked to it.

7. As a sequel to the above discussion and finding, the appeal is accepted. Judgement of the Sessions Judge, convicting and sentencing the appellant for an offence, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, is set-aside. The appellant, who is in custody, is ordered to be set at liberty forthwith in case his detention is not required in connection with any other case.

(Surjit Singh),
Judge.

March 7, 2007. **(Dev Darshan Sud),**
(*Hem*) **Judge.**